No. 80-169

IN THE

Supreme Court of the United States

October Term, 1980

UNITED PARCEL SERVICE, INC.,

Petitioner,

v.

WILLIAM MITCHELL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF FOR PETITIONER

BERNARD G. SEGAL,*
JAMES D. CRAWFORD,
NICHOLAS N. PRICE,
Attorneys for Petitioner.

SCHNADER, HARRISON, SEGAL & LEWIS
1719 Packard Building
Philadelphia, Pennsylvania 19102

PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, New York 10022
Of Counsel.

* Counsel of record for petitioner.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

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REPLY BRIEF FOR PETITIONER

Pursuant to Rules 34.4 and 35.3 of the Rules of the Supreme Court, petitioner, United Parcel Service, Inc. ("UPS"), hereby submits its reply brief on the merits.[1]

1. Pursuant to Supreme Court Rule 28.1, United Parcel Service states that it is a wholly owned subsidiary of United Parcel Service of America, Inc. United Parcel Service of America, Inc., is affiliated with Service Plants Corporation ("SPC), a holding company whose subsidiaries (all wholly-owned) own and lease real estate to UPS. Owners of UPS capital stock own beneficial interests in SPC common stock.

STATEMENT OF THE CASE

The issue presented in this case is which statute of limitations applies when an employee, who unsuccessfully challenged his discharge in arbitration, institutes a subsequent action against his employer under section 301 of the **Labor-Management Relations Act,** 29 U. S. C. § 185. The Court of Appeals for the Second Circuit held that the appropriate statute of limitations is the six-year period contained in **N. Y. Civ. Prac. Law** § 213(2). UPS contends that this action should be governed by the ninety-day statute of limitations applicable to proceedings to vacate arbitration awards, **N. Y. Civ. Prac. Law** § 7511(a), since the relief respondent seeks (reinstatement with back pay) can be obtained only by vacating the arbitration award which had denied his grievance.

ARGUMENT

I. Respondent's Alternative Contention That His Claim Against UPS Might Be Governed by a Three-Year Statute of Limitations Is Plainly Incorrect.

UPS's principal brief focused only on the question whether Mitchell's claims against it should be governed by **N. Y. CPLR** § 7511(a) or by **N. Y. CPLR** § 213(2), since those were the only two statutes of limitations considered by the Court of Appeals. Mitchell, however, contends that this Court need not choose between only those two statutes of limitations. Rather, he suggests that this Court could find the action also governed by three different three-year provisions of a New York statute of limitations —**N. Y. CPLR** §§ 214(2) (statutory claims), 214(5) (personal injury) and 214(6) (malpractice). Since Mitchell filed his suit nineteen months after his discharge, he claims that his action would be timely under any of those three provisions of the statute of limitations.

The three different statute of limitations provisions cited by Mitchell have no relevance to his claim against UPS; they would apply (if at all) only to Mitchell's claim against his *union*, the Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union #177 ("the Union"). However, the only question raised in the petition for certiorari is the statute of limitations applicable to Mitchell's claim against his employer, UPS. *See* **Liotta v. National Forge Co.**, 629 F. 2d 903 (3d Cir. 1980).

That **N. Y. CPLR** §§ 214(2), 214(5) and 214(6) apply, if at all, only to Mitchell's claim against the Union is evident both from Mitchell's brief itself and from the cases on which he relies. Mitchell's discussion of two of those provisions—**CPLR** § 214(2) (statutory claim) and § 214(6) (malpractice)—addresses only his claims against the Union.

See Brief for Respondent at 13-14 and 22. Furthermore, the cases he cites in support of his contention that his suit was subject either to the statute of limitations provision for actions alleging breach of a statutory duty [2] or to the one for personal injury [3] applied such statute of limitations provisions only with respect to claims against unions alleging a breach of the duty of fair representation. The fact that Mitchell may have a claim against the Union does not affect the determination of which statute of limitations governs his claim against his employer. *See* **Liotta v. National Forge Co.,** *supra,* 629 F. 2d at 905.

Finally, none of the provisions of the statute of limitations urged by Mitchell has any particular relevance to a claim filed against an employer after the employer has prevailed in arbitration. Since Mitchell is seeking relief denied him by an arbitration award, the statute of limitations applicable to proceedings to vacate arbitration awards obviously addresses his claim more specifically than do statute of limitations provisions for malpractice, breach of a statutory duty or personal injury.[4]

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2. **Gray v. International Assoc. of Heat & Frost Insulators and Asbestos Workers, Local No. 51,** 416 F. 2d 313 (6th Cir. 1969), and **Canada v. United Parcel Service, Inc.,** 446 F. Supp. 1048 (N. D. Ill. 1978). In **Canada,** the claim against UPS was based only on Title VII of the **1964 Civil Rights Act,** not section 301 of the **Labor-Management Relations Act.** *See* 446 F. Supp. at 1051.

3. **Sanderson v. Ford Motor Co.,** 483 F. 2d 102, 114 (5th Cir. 1973); **De Arroyo v. Sindicato de Trabajadores Packinghouse, AFL-CIO,** 425 F. 2d 281, 286-87 (1st Cir.), *cert. denied,* 400 U. S. 877 (1970); **Smart v. Ellis Trucking Co., Inc.,** 580 F. 2d 215 (6th Cir. 1978), *cert. denied,* 440 U. S. 958 (1979).

4. *Cf.* **Morton v. Mancari,** 417 U. S. 535, 550-51 (1974); **Radzanower v. Touche Ross & Co.,** 426 U. S. 148 (1976); **Preiser v. Rodriguez,** 411 U. S. 475, 488-90 (1973); **Lashlee v. Sumner,** 570 F. 2d 107, 109 (6th Cir. 1978), which were discussed on pages 12 and 13 of UPS's principal brief.

Indeed, by advocating the adoption of a three-year statute of limitations which would apply only to his claim against the Union, if at all, Mitchell underscores the illogic of his contention that his claim against UPS is subject to a six-year statute of limitations. Adopting a three-year statute of limitations for the Union, while at the same time adopting a six-year breach of contract statute of limitations for the employer, would lead only to the most anomalous and inequitable of results. Under **Hines v. Anchor Motor Freight, Inc.**, 424 U. S. 554 (1976), an employee who lost at arbitration can prevail against his employer in a section 301 action only if he establishes, *inter alia*, that the union breached its duty of fair representation during the arbitration process. However, if a suit were brought more than three, but less than six, years after the cause of action accrued, only the employer (under Mitchell's view) could be held liable, despite the fact that the union's wrongdoing must be established in order for the employee to recover from his employer. Thus, adopting a longer limitations period for the employer than for the union would be inconsistent with this Court's observation in **Vaca v. Sipes**, 386 U. S. 171, 187 (1967), that: "What possible sense could there be in a rule which would permit a court that has litigated the fault of the employer and the union to fashion a remedy only with respect to the employer?" It is anomalous to suggest that a longer statute of limitations should apply to an employer than to the union whose dereliction is the prerequisite to employer liability.

Finally, even if it were assumed *arguendo* that Mitchell is correct in analogizing his claim against the Union to a claim for malpractice, this would confirm UPS's position that the claim against it should be subject to a ninety-day limitations period. When a litigant has a valid malpractice claim against his counsel for failing to

file suit against the intended defendant within the limitations period, that litigant's claim against the intended defendant nevertheless remains time-barred. Similarly, a litigant may have a viable malpractice claim against his counsel for improper handling of a case which has been tried and lost on the merits, and yet be barred by *res judicata* from proceeding a second time against the original defendant. Thus, if the Union's alleged failure to represent Mitchell fairly were in fact analogous to malpractice, as Mitchell suggests, there would be nothing at all unusual in allowing him to proceed against the Union only and not against UPS. Mitchell, however, suggests an absurd scenario in which employees frequently would be able to proceed against the employer only, and not against the union, although the union is the party guilty of the "malpractice." Such a result would be both illogical and contrary to **Vaca v. Sipes.**

II. Respondent's Reliance on Jackson v. Regional Transit Service Is Misplaced.

On pages 31-32 of this brief, Mitchell construes the New York state court decision of **Jackson v. Regional Transit Service,** 54 A. D. 2d 305, 388 N. Y. S. 2d 441 (4th Dept. 1976), as implicitly rejecting the applicability of **N. Y. CPLR** § 7511(a) to proceedings brought pursuant to **Hines v. Anchor Motor Freight,** *supra.* As Mitchell notes, the action in **Jackson** had been filed after expiration of the 90-day time limit set forth in **CPLR** § 7511(a). However, the opinion in **Jackson** gives no indication whether the employer had moved to dismiss the case on the ground that it was time-barred under **CPLR** § 7511(a), nor does it even address the question of which statute of limitations was applicable. Moreover, the very language quoted on page 32 of Mitchell's brief makes clear that the arbitrator in **Jackson** had merely concluded that the grievance was

"non-arbitrable" because of noncompliance with the contractual time limits for selecting an arbitrator. An arbitrator who refuses to hear the case at all obviously has not decided the issue on the merits or indeed made any award. Accordingly, the plaintiff in **Jackson,** unlike Mitchell, was not seeking to vacate an arbitration award or to relitigate the same issue decided against him in arbitration. Consequently, **Jackson** is of no support at all for Mitchell's position in this litigation.

Indeed, **Jackson** actually undercuts Mitchell's position by casting doubt on the continued validity of one of the principal cases upon which he relies, **In re Soto,** 7 N. Y. 2d 397, 165 N. E. 2d 855 (1960). Mitchell relies on **In re Soto** for the proposition that he would not have had standing in the New York state courts to move to vacate an arbitration award.[5] **Jackson,** however, noted that **In re Soto** had been decided *prior* to **Vaca v. Sipes.** Citing **In re Soto,** the court in **Jackson** stated:

> Under New York law prior to *Vaca v. Sipes, supra,* a private union employee had no direct action against his employer; but was limited to the remedies provided by the collective bargaining agreement negotiated between his employer and his union. . . . [citations omitted]. However, the United States Supreme Court has extended the rights of an individual employee and ruled that a wrongfully discharged employee may bring an action against his employer. . . . Even where the grievance proceeds to arbitration on

5. As pointed out on pages 13-14 of USP's principal brief, whether or not Mitchell would have had standing in the New York state courts is completely irrelevant to the question of which *statute of limitations* applies when he files a section 301 suit in federal court. As a matter of federal law, Mitchell clearly has standing. *See* **Vaca v. Sipes,** 386 U. S. 171 (1967); **Smith v. Evening News Ass'n,** 371 U. S. 195 (1962).

> the merits, if the union breached its duty of fair representation, the arbitration award will not bar a direct suit by an employee against his employer [citing *Hines*].

388 N. Y. S. 2d at 443. **Jackson** then proceeded to permit a direct suit by an employee against his employer, a result which it stated would not have been permissible under **In re Soto.**

III. The Only Statute of Limitations Appropriate for Mitchell's Claim Against UPS is the 90-Day Statute for Actions to Vacate Arbitration Awards.

Mitchell's brief fails to offer any convincing rebuttal to UPS's contention that his claim against UPS is subject to the 90-day statute of limitations contained in **N. Y. CPLR** § 7511(a). Mitchell's argument in essence is that the statute of limitations should be the same (six years) whether or not there is an arbitration award because in either event his underlying claim is the same—wrongful discharge in violation of the collective bargaining agreement. However, for at least three reasons, the fact that Mitchell's underlying claim is for wrongful discharge does not negate the applicability of the 90-day statute of limitations for actions to vacate arbitration awards.

First, under **Hines,** Mitchell cannot even litigate his underlying wrongful discharge claim unless he first convinces the Court to remove "the bar of the finality provisions of the contract" by proving that the Union breached its duty of fair representation. **Hines,** *supra,* 424 U. S. at at 567. In the instant case the finality is embodied in an arbitration award, and Mitchell therefore must persuade the Court to vacate that award before reaching the merits. However, because Mitchell did not file a timely action to vacate the award, the award remains valid and proves an

insurmountable hurdle to the relitigation of his underlying claim of wrongful discharge.

Second, Mitchell's assertion that the applicable statute of limitations depends on the nature of the underlying claim rather than on whether there was an arbitration is misplaced. Every arbitration award involved an underlying claim. The very nature of arbitration is that an underlying claim has been submitted to an arbitrator for resolution. Pushed to its logical extreme, focusing on the nature of the underlying claim would preclude a party from being able to assert **CPLR** § 7511(a) as a bar to *any* proceeding to overturn an arbitration award—including proceedings brought by unions and employers, which Mitchell concedes (Brief for Respondent at 33-34) are governed by **CPLR** § 7511(a).

Third, the inescapable effect of granting Mitchell the relief he seeks in this lawsuit is nullification of the arbitration award. Even the two courts—the court below and the Sixth Circuit—that have adopted the view he advocates have admitted as much. As the court below stated (A. 139), quoting **Smart v. Ellis Trucking Co.**, 580 F. 2d 215, 219 (6th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979), "'the effect of a judgment for [the discharged employee] would be to nullify the arbitral decision, . . .'" Since Mitchell seeks to have the award set aside in order to litigate his underlying claim, and since the necessary result of a successful lawsuit would be the setting aside of the award, it is evident that the state statute of limitations for proceedings to vacate arbitration awards fits his action more closely than does any other statute.

Mitchell also has failed to rebut UPS's contention that a six-year statute of limitations would undermine federal labor policy. This Court has stressed repeatedly that, when applying state statutes of limitations to federal claims, care must be taken not to undermine the federal policies involved. **Occidental Life Insurance Co. v. EEOC,**

432 U. S. 355, 367 (1977); **Johnson v. Railway Express Agency, Inc.**, 421 U. S. 454, 465 (1975); and **International Union, UAW v. Hoosier Cardinal Corp.**, 383 U. S. 696, 706-07 (1966). The federal policy favoring arbitration as a speedy and inexpensive means of resolving labor disputes clearly would be frustrated if, despite taking a dispute to "final and binding" arbitration, the parties could be forced to relitigate the same dispute in the courts six years later. For six years after the dispute arose, management and labor could rely on an arbitration award only at their peril. Where the arbitrated dispute involves a question of contract interpretation or a class of grievants, the uncertainty created by the possibility of litigation six years later as to contracts of one to three years' duration would be intolerable. Management and labor cannot have a smooth collective bargaining relationship where the myriad of disputes that arise between them cannot be resolved quickly and finally.

CONCLUSION

For the foregoing reasons, as well as for the reasons set forth in petitioner's principal brief, petitioner, United Parcel Service, Inc., respectfully requests this Court to reverse the judgment of the Court of Appeals and to direct the reinstatement of the judgment of the District Court that had dismissed the complaint with prejudice.

Respectfully submitted,

BERNARD G. SEGAL
JAMES D. CRAWFORD
NICHOLAS N. PRICE
Attorneys for Petitioner,
United Parcel Service, Inc.

SCHNADER, HARRISON, SEGAL & LEWIS
1719 Packard Building
Philadelphia, Pennsylvania 19102

PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, N. Y. 10022

Of Counsel.